

Yukon Legislative Assembly

Information Sheet No. 7 The Differences between Provinces and Territories

The Legal Basis for Territories

In 1867 the *British North America Act* (now called the *Constitution Act, 1867*) created the Dominion of Canada. It created a federal system of government with a central parliament and government responsible for national matters (described in section 91) and provincial legislatures and governments responsible for local matters (described in section 92). Areas of the country not included in the various provinces were left under the jurisdiction of the Parliament of Canada and the Government of Canada. In those areas the Parliament of Canada has created territorial governments to oversee local matters.

The existence of territorial governments was not, and still is not, entrenched in Canada's constitution. The existence, powers and forms of territorial governments are outlined in federal legislation – the *Yukon Act*, the *Northwest Territories Act* and the *Nunavut Act*. Because they are created by federal legislation and not constitutionally entrenched territories are less secure. Legally, the Parliament of Canada could change these acts at any time, though section 56 of the *Yukon Act* says, "Before a bill that amends or repeals this Act is introduced in the House of Commons by a federal minister, the Minister shall consult with [Yukon's cabinet] with respect to the proposed amendment or repeal." This section also says, "The [Yukon] Legislative Assembly may make any recommendations to the Minister that it considers appropriate with respect to the amendment or repeal of this Act."

The lack of constitutional entrenchment also makes these arrangements more flexible. As section 56 makes clear the *Yukon Act* can be changed without having to go through the formal constitutional amendment process outlined in sections 41 and 42 of the *Constitution Act, 1982*. The processes outlined in these sections dictate that the approval of the Parliament of Canada and a certain number of provincial legislatures representing a certain percentage of the population of Canada is needed, depending on the type of amendment sought. Also, as each territory is founded on a different piece of federal legislation there is no 'one size fits all' with regards to territorial status. Each can negotiate its own arrangement with the federal government. For example, a *Yukon Act* came into effect on April 1, 2003. The changes from the previous *Yukon Act* were negotiated between the federal government and the Government of Yukon, with some participation from Yukon First Nations. Other provincial and territorial governments were not involved.

Responsible Government in Yukon

Under the *Constitution Act, 1867* provinces received, with certain exceptions, the range of powers set out in Section 92 when they entered Confederation. The situation is different for territories. For a long time after its creation, the Yukon Government was very small and didn't control very much. The Government of Canada ran almost all

government activity in Yukon through various departments over the years, most recently the Department of Indian Affairs and Northern Development. A Commissioner, appointed by, and responsible to, the federal cabinet was responsible for running the Yukon Government on a daily basis.

The lack of jurisdiction of the Yukon Government, the lack of authority of the territorial council (now called the Legislative Assembly) and the control by the Commissioner, changed gradually. From 1898 to 1979 the Commissioner had the combined powers of the head of government (Premier) and the head of state (Lieutenant Governor). Over the years various governmental powers (those under control of a provincial government in a province) were transferred from the federal government to the Government of Yukon.

Since 1979 Yukon has operated according to the principles of responsible government; that the head of state (the Commissioner) acts on advice received from the head of government (the Premier) who is the individual who 'commands the confidence of the Assembly.' In practice this means the person who is the leader of the largest party in the Assembly, usually a majority.

The Yukon Government today

Today Yukon is governed in a manner similar to that of the provinces. Yukon has a legislative assembly with 18 elected members. Unlike the Northwest Territories and Nunavut, the Yukon has political parties that contest territorial elections. There is a territorial cabinet that is in form (but not size) the same as a provincial or federal cabinet.

The Yukon Legislature has the power to legislate in most of the same areas that a provincial legislature does; education, health care, social services, recreation, roads and other infrastructure, etc. One functional difference is that although the Yukon Government has a department of Justice, the Attorney-General function (the ability to act as the chief law officer of the Crown) still rests with the federal government.

As of April 1, 2003 the Yukon gained control over its natural resources, a power the provinces have but the other territories do not. Crown land (land belonging to the government) is still owned by the federal government, though the territory manages it and has the right to get resource royalties from it as part of the transfer of control over natural resources. In the provinces Crown Land belongs to the provincial government.

Today the major political difference between provinces and territories is constitutional. The territories are not included in the amending formula that is used to change Canada's constitution. Only the Parliament of Canada and the provincial legislatures are included in this formula. In constitutional matters it is assumed that the Parliament of Canada speaks for, and will protect the interests of, the territories and their people.

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